

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 195

January 7, 1957

GROSS INCOME: VOLUNTARY PAYMENTS TO SURVIVING DEPENDENTS OF DECEASED EMPLOYEE

Syllabus:

Voluntary payments by an employer to the surviving dependents of a deceased employee do not constitute income if the services of the decedent have been fully compensated for and the dependents performed no services for the employer.

In the Appeal of Ida A. Rogers and the Appeal of Irma Livingston, both decided November 27, 1956, the Board of Equalization held that voluntary payments to the surviving dependent of a deceased employee were not includible in income. The payment was made to the employee's widow in the Rogers case and to the employee's daughter in the Livingston case.

In the Rogers case the Board of Equalization relied on Estate of Arthur W. Hellstrom, 24TC, No. 101. In the Hellstrom case the Tax Court held that the payment to the widow was not taxable despite the fact that the payment corresponded to the husband's monthly salary and the payment was deducted by the employer on its income tax return. The court stated that the payments would be excludable from income even where the resolution provided that the payment was "inconsideration of services rendered" by the employee and that the fact that the employer made a practice of making such payments would not prevent the operation of this rule. The Board of Equalization cited the following language from the Hellstrom opinion:

"We think the controlling facts here which establish the payment as a gift are that the payment was made to petitioner and not to her husband's estate; that there was no obligation on the part of the corporation to pay any additional compensation to petitioner's husband; it derived no benefit from the payment; petitioner performed no services for the corporation and, as heretofore noted, those of her husband had been fully compensated for. We think the principal motive of the corporation in making the payment was its desire to do an act of kindness for petitioner. The payment, therefore, was a gift to her and not taxable income."

This Board shall consider such payments to be nontaxable in all cases where the facts surrounding the payment are the same as those summarized in the above quotation.